

ORDINANCE 1524

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, DECLARING AN EMERGENCY, RENEWING A SIX-MONTH MORATORIUM WITHIN THE CITY OF NORTH BEND ON THE ESTABLISHMENT OF MEDICAL MARIJUANA OR CANNABIS DISPENSARIES, PRODUCTION FACILITIES, AND PROCESSING FACILITIES, AND ON THE LOCATION, OPERATION, LICENSING, MAINTENANCE OR CONTINUATION OF MEDICAL CANNABIS COLLECTIVE GARDENS; DEFINING TERMS; ESTABLISHING A WORK PLAN REGARDING CITY REGULATIONS REGARDING MEDICAL MARIJUANA; AND PROVIDING FOR SEVERABILITY

WHEREAS, on June 7, 2011, the City Council of the City of North Bend, Washington, adopted Ordinance 1433 which first enacted a moratorium on the establishment, location, operation, licensing, maintenance or continuation of medical cannabis collective gardens or dispensaries; and

WHEREAS, Initiative Measure No. 692, now codified as Chapter 69.51A RCW, created a limited defense to marijuana charges under state, but not federal, law, if the person charged could demonstrate that he or she was a qualifying patient or designated provider as those terms are defined in Chapter 69.51A RCW; and

WHEREAS, in 2007, the state legislature amended the law, and again in 2011, the state legislature passed a third amendment to the law, E2SSB 5073, Chapter 181, Laws of 2011, which took effect on July 22, 2011; and

WHEREAS, no provision of E2SSB 5073 precludes the City from zoning or otherwise regulating medical cannabis collective gardens in a manner consistent with the provisions therein, and the Washington Supreme Court's recent decision in Cannabis Action Coalition v. City of Kent makes clear that so-called medical marijuana "collective gardens" are not legal; and

WHEREAS, the possession or distribution of cannabis (marijuana) has been and continues to be a violation of federal law, through the Controlled Substances Act ("CSA"); and

WHEREAS, two U.S. Attorneys, Michael Ormsby and Jennifer Durkan wrote a letter to the Washington State Governor in 2011, stating that marijuana is a Schedule I controlled substance under federal law and, as such, “growing, distributing and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities.” These U.S. Attorneys also concluded, “state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA;” and

WHEREAS, the enactment of E2SSB 5073 has created uncertainty regarding the appropriate regulation of marijuana in the City because at least some or all of the provisions of E2SSB 5073 conflict with federal law; and

WHEREAS, the City is the recipient of multiple federal grants for which compliance with all federal laws is a requirement; and

WHEREAS, the enactment by the voters in November 2012 of Initiative 502 regarding limited marijuana possession and use has created additional uncertainty regarding the appropriate regulation of marijuana in the City; and

WHEREAS, the State Liquor Control Board has issued its rules for the regulation of marijuana producers, processors and retailers pursuant to Initiative 502; and

WHEREAS, the City continues to analyze potential changes to city zoning regulations that may be necessary to address changes in State or federal law, and to bring any amendments to the North Bend Municipal Code before the Planning Commission and City Council for their consideration; and

WHEREAS, the Community and Economic Development Department has diligently pursued the issue but has recommended to the Council that it needs additional time to completely develop a workable set of recommendations for local land use controls for safe and effective regulation of collective gardens in the community under State and federal law and in light of the State Liquor Control Board proposed rules; and

WHEREAS, on October 14, 2013 the City Council held a public hearing on the extension of the moratorium and thereafter passed Ordinance 1503, renewing the moratorium for six months to provide additional time to research and recommend to the City Council a regulatory framework and to further refine the City’s work program attached as Exhibit A; and

WHEREAS, since the approval of Ordinance 1503 the City has been working diligently to develop zoning regulation related to the use of marijuana including medical marijuana; and

WHEREAS, since the adoption of Ordinance 1503 the Planning Commission has discussed the use and considered zoning regulations on January 23, 2014, February 27,

2014, March 13, 2014, and March 27, 2014 and a public hearing was held on March 13, 2014; and

WHEREAS; the Planning Commission needs additional time to complete their evaluation of the proposed zoning regulations and therefore it is important to ensure that the existing moratorium is continued without interruption to ensure adequate time for completion of this work;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Findings of Fact: The recitals set forth above, as well as those set forth in earlier ordinances establishing or renewing this moratorium, are hereby adopted as the City Council's findings in support of the moratorium renewed by this ordinance.

Section 2. Moratorium Established: Pursuant to the provisions of Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.220, and RCW 36.70A.390, the moratorium established by Ordinance 1433 is hereby renewed for a term of six (6) months, during which time the following is prohibited within the City of North Bend: the establishment, location, operation, licensing, maintenance, or continuation of any medical cannabis collective garden or any medical marijuana dispensary, whether for profit or not for profit, asserted to be authorized or actually authorized under E2SSB 5073, Chapter 181, Laws of 2011, Chapter 69.51A RCW, or any other laws of the state of Washington. Further, no building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed above, and no business license shall be granted or accepted while this moratorium is in effect. Any land use permits, business licenses or other permits for any of these operations that are issued as a result of error or by use of vague or deceptive descriptions during the moratorium are null and void, and without legal force or effect. As used in this ordinance, the following terms have the meanings set forth below:

A. "Medical marijuana dispensary" means any business, agency, organization, cooperative, network, consultation operation, or other group, or person, no matter how described or defined, including its associated premises and equipment, which has for its purpose or which is used to grow, select, measure, package, label, deliver, sell, or otherwise transfer (for consideration or otherwise) marijuana for medical use. One (1) individual person who is the designated provider for only one (1) qualified patient during any 15 day period and who complies with Chapter 69.51A RCW, shall not be deemed a medical marijuana dispensary for the purposes of this moratorium.

B. "Medical marijuana collective garden" means a group of qualifying patients that share responsibility for acquiring and supplying the resources required to produce and process marijuana for medical use. Examples of collective garden resources would include, without limitation, the following: property used for a

collective garden; or equipment, supplies, and labor necessary to plant, grow and harvest marijuana; marijuana plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of marijuana plants. A medical marijuana collective garden shall satisfy the above definition regardless of its formation, ownership, management, or operation as a business, agency, organization, cooperative, network, consultation operation, group, or person. One (1) individual person who is the designated provider for only one qualified patient during any 15 day period and who complies with Chapter 69.51A RCW, or an individual person who is a qualified patient and who complies with 69.51A RCW, shall not be deemed a medical marijuana collective garden for the purposes of this moratorium.

Section 3. No Nonconforming Uses: No use that constitutes or purports to be a medical marijuana dispensary or medical marijuana collective garden as those terms are defined in this ordinance, and that was engaged in that activity prior to the enactment of this ordinance, shall be deemed to have been a legally established use under the provisions of the North Bend Municipal Code and no such use shall be entitled to claim legal nonconforming status.

Section 4. Effective Period for Renewal of the Moratorium: The renewal of the moratorium set forth in this ordinance shall be in effect for a period of six (6) months from the effective date of this ordinance, and shall automatically expire at the conclusion of that six-month period unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the city council.

Section 5. Public Hearing: Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council held a public hearing during the City Council's regular meeting on April 15, 2014.

Section 6. Referral to Staff: The Planning and Economic Development Director and the Finance Director are hereby authorized and directed to continue working to develop appropriate land use, business licensing, and other regulations for presentation to the North Bend City Council.

Section 7. Severability: If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

Section 8. Effective Date: This Ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, or public peace, shall take effect and be in full force immediately upon its adoption. Pursuant to Matson v. Clark County Board of Commissioners, 79 Wn. App. 641, 904 P.2d 317 (1995), underlying facts necessary to support this emergency declaration are included in the

“WHEREAS” clauses, above, all of which are adopted by reference as findings of fact as if fully set forth herein.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 15TH DAY OF APRIL, 2014.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Kenneth G. Hearing, Mayor

Michael R. Kenyon, City Attorney

ATTEST/AUTHENTICATED:

Published: April 23, 2014
Effective: April 15, 2014

Susie Oppedal, City Clerk